IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17286 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HITENDRA VRAJLAL TRIVEDI

Versus

DEPUTY LABOUR COMMISSIONER

Appearance:

1. Special Civil Application No. 17286 of 2003

MR ASIT B JOSHI for Petitioner No. 1

MS FALGUNI PATEL, ASSTT.GOVERNMENT PLEADER for Respondent No. 1-2

NOTICE SERVED for Respondent No. 1-3

MR PREMAL R JOSHI for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 18/08/2004

ORAL JUDGEMENT

Rule. Ms Falguni Patel, learned Assistant Government Pleader waives service of notice of rule for respondents Nos. 1 and 2, whereas Mr. Premal Joshi, learned Counsel waives service of notice of rule for respondent No.3. At the joint request of learned Advocates for the parties, the matter is taken up for final disposal today.

2. In the present petition, the petitioner is challenging the order dated 21.5.2003, passed by the respondent No.2 - Deputy Labour Commissioner, Rajkot, by which the said authority refused to hold conciliation efforts between the petitioner and the respondent No.3 on the ground that the petitioner had approached after a delay of about six years.

3. The facts leading to the present petition are that the petitioner was engaged by the respondent No.3 on 2.7.1996 for collection of house-tax at a fixed salary of Rs. 1,000/- per month, initially for a period of 3 months. The said appointment continued from time to time and the petitioner continued to discharge the said duties upto 1.4.1997, when his services came to be terminated. The petitioner approached the respondent No.3 by writing a letter dated 29.12.2002 and demanded that he be reinstated in service, failing which he will approach the Deputy Labour Commissioner. In his letter dated 29.12.2002, the petitioner had also stated that he was approaching personally from time to time and he was told that he will be reinstated in service. The petitioner has also stated that the action of termination of his services is illegal; that he had worked for more than 240 days. He has also stated that the work which he was doing continues even today and is being done by new persons who were engaged after the services of the petitioner were terminated.

4. The petitioner thereafter appears to have approached the Deputy Labour Commissioner, as can be seen from the copy of approach letter produced at page No.16 of the petition. In the said letter, the petitioner has inter-alia stated that after his services were terminated, the petitioner used to personally visit the office of the respondent No.3 time and again and he was informed by the officers of the respondent No.3 that the petitioner should wait for some time and that he would be taken back in service. Even after the respondent No.3 was converted into a Municipality, the petitioner had met the officers and he was told that he should not file a case, and as new persons are required, petitioner will be engaged soon. The petitioner has therefore, stated that

on account of the above circumstances beyond his control there has been delay in raising the dispute, which may be condoned. The respondent No.1 however, by his impugned communication dated 21.5.2003 was pleased to reject the said application on the ground that there has been a delay of six years which is not required to be condoned.

5. The learned Counsel for the petitioner has submitted that the petitioner had successfully explained delay caused in approaching the Conciliation Officer and that the respondent No.1 has committed a serious error of law in rejecting the request of the petitioner to refer the dispute for adjudication to the Labour Court. He submits that the respondent No.1 has in fact even refused to conciliate merely on the ground of delay. He submits that there is no limitation provided under the Act for the said purpose and therefore, the action of the respondent is unjust and illegal, especially when the petitioner had explained the reasons for the delay.

5.1 In support of his contention, he has relied on the decision of this Court in the case of Mahesh Ramdin Kanojya Vs. Manager, Air India and anr., reported in 1996 (2) G.L.H (U.J) 11, wherein the Division Bench of this Court was pleased to direct the appropriate Government to make a reference when the same was turned down on the ground of delay and laches. In the said case the termination of workman was of 31.7.1986 for which the dispute was raised in the year 1990. The demand for referring the dispute for adjudication was turned down on 11.9.1991 and the petition challenging the same was filed in the year 1995. In the said decision, ignoring the delay, the Division Bench had directed the Government to make a reference of of the Industrial dispute to the appropriate Industrial Tribunal.

5.2 The learned Counsel has also relied upon a decision of this Court in the case of Kheda Jilla General Mazdoor Mandal V. State of Gujarat and Ors. reported in 1995 (2) GLH (U.J) 9, wherein also the Divison Bench of this Court had come to the conclusion that the Limitation Act does not apply to the proceedings under the Industrial Disputes Act and held that the appropriate Government had committed error in relying upon the provisions of the Limitation Act for refusing to refer the dispute to the appropriate forum and observed that delay alone is no ground for refusing to make reference.

5.3 The learned Counsel has also relied upon a decision of the Hon'ble Supreme Court in the case of Mahavir Singh V. U.P. State Electricity Board and ors.

reported in (1999) 9 SCC 178, wherein the Labour Court after holding that the termination of the workman was illegal, awarded only 50% backwages in view of the delay in raising the dispute, and the High Court had held that the entire reference was incompetent, the Hon'ble Supreme Court found that the Labour Court's order was neither uncalled for, nor illegal.

6. Learned Counsel Mr. Premal Joshi appearing for the respondent No.3 has contended that the impugned order is proper and legal. He submitted that the petitioner has not produced any evidence to show that he had approached the officers of the respondent No.3 and in that view of the matter, the respondent No.1 was justified in rejecting the application of the petitioner on the ground of gross unexplained delay.

6.1 In support of his contention, he has relied upon the decision of the Hon'ble Supreme Court in the case of The Nedungadi Bank Ltd. V. K.P. Madhavankutty & ors. reported in AIR 2000 SC 839, wherein the Hon'ble Supreme Court has observed that though law does not prescribe any time limit for the appropriate Government to exercise its powers under Section 10 of the Industrial Disputes Act, it is not that such power can be exercised at any point of time and to revive matters which have since been settled and the powers are to be exercised reasonably and in a rational manner. In that case, the Central Government had exercised the powers after a lapse of about 7 years of dismissal of the workman. The Hon'ble Supreme Court noted that at the time when the reference was made, no industrial dispute existed or could have been apprehended and such a stale dispute could not have been referred.

7. Learned Assistant Government Pleader appearing for respondents Nos. 1 and 2 has supported the arguments advanced by learned Counsel for respondent No.3. She further contended that the decision taken by respondent No.1 is well within the powers of the respondent No.1 under Section 12(1) of the Industrial Disputes Act.

8. In the present petition, I find that the petitioner whose services were terminated with effect from 1.4.1997 had approached the respondent No.3 i.e. the employer by a letter dated 29.12.2002, wherein he had specifically contended that he was visiting the office of the respondent No.3 time and again. Subsequently also when the petitioner approached the Deputy Labour Commissioner, the said averments were repeated and it was elaborated that the officers of the respondent No.3 had

assured the petitioner that he will be reengaged due to which the petitioner could not approach earlier for raising the dispute. I am of the view that the respondent No.1 has not taken into consideration this aspect of the matter and has, by impugned order even refused to conciliate, which in my view is an illegal action.

9. In the decision of the Hon'ble Supreme Court in the case of The M.P. Irrigation Karmachari Sangh V. State of M.P and anr. reported in AIR 1985 SC 860, it has been observed that there may be exceptional cases in which the State Government may on a proper examination of the demand come to a conclusion that the demands are either perverse or frivolous and do not merit a reference. The Hon'ble Supreme Court has held that the Government should be very slow to attempt an examination of demand with a view to decline reference and the Courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of valid disputes. The Hon'ble Supreme Court in paragraph 7 of its judgement has observed as follows:-

> "There may be exceptional cases in which the State Government may, on a proper examination of the demand, come to a conclusion that the demands are either perverse or frivolous and do not merit a reference. Government should be very slow to attempt an examination of the demand with a view to decline reference and Courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of valid disputes. To allow the Government to do so would be to render S.10 and S.12(5) of the Industrial Disputes Act nugatory."

10. Yet in another decision of the Hon'ble Supreme Court in the case of Sharad Kumar Vs. Govt. of NCT of Delhi and ors. reported in AIR 2002 SC 1724, it is observed that where determination of any question requires examination of factual matters for which materials including oral evidence will have to be considered, the State Government could not arrogate on to itself the power to adjudicate on the question and hold that the respondent was not a workman within the meaning of Section 2(s) of the Act, thereby terminating the proceedings prematurely. Such a matter should be decided by the Industrial Tribunal or Labour Court on the basis of material placed before it by the parties.

11. In the decision reported in AIR 1989 SC 1565

(Telco Convoy Drivers Mazdoor Sangh and anr. V. State of Bihar) also the Hon'ble Supreme Court has observed that appropriate Government while considering question whether reference should be made or not cannot delve into merits of dispute and determine the lis itself.

12. In the case of Ajaib Singh V. Sirhind Cooperative Marketing -cum-processing Service Society Limited and anr. reported in (1999) 6 SCC 82, the Hon'ble Supreme Court has held that reference under Section 10 and 33-C of the Industrial Disputes Act are not subject to limitation under Article 137 of the Limitation Act. In that case, in view of 7 years of delay in seeking reference regarding the termination of service, the Hon'ble Supreme Court while upholding the Labour Court's award for reinstatement and continuity of service, limited the entitlement of the workman to 60% backwages.

13. As discussed above, the appropriate Government has extremely limited jurisdiction to refuse to refer an industrial dispute which is existing or apprehended and it is not open for the appropriate Government to decide the lis between the parties and to terminate the dispute prematurely. In the present case, the question in fact arises when the appropriate Government under Sections 10(1) or 12(5) of the Industrial Disputes Act, has limited jurisdiction to refuse to refer the dispute for adjudication, can the conciliation officer exercising powers under Section 12(1) of the Industrial Disputes Act refuse to conciliate on the ground that the dispute is stale and that the explanation offered by the petitioner is not acceptable? In a case where the Conciliation Officer had refused to conciliate between the parties on the ground that the workman was covered under the BCSR Rules and that therefore the Industrial Dispute Act did not apply, this Court had made following observations in paragraphs 5 and 7:-

> "5. I find that the Assistant Labour Commissioner has committed illegality in passing the impugned orders whereby it is stated that since BCS Rules are applicable to the petitioner, there is no industrial dispute which has arisen. I find that under Section 12 of the Industrial Disputes Act, the duties of the Conciliation Officer are set out, which include that of holding conciliation proceedings between the parties for the purpose of bringing about settlement of the disputes. The said section also provides that if settlement of the dispute

is arrived at in the course of the conciliation proceedings, the Conciliation Officer shall send a report thereof to the appropriate Government. Sub-section (4) of the said section provides that if no settlement is arrived at, the Conciliation Officer shall send to the appropriate Government a full report including the facts and circumstances relating to the dispute as also the reasons on account of which in his opinion, the settlement could not be arrived at. Under sub-section (5) of Section 12 of the said Act, upon failure report being submitted by the Conciliation Officer under sub-section (4) of the said Section, if the appropriate Government is satisfied that there is a case for reference to a Board, Labour Court or Tribunal, it may make such a reference. From the plain reading of the said provisions of the Industrial Disputes Act, it is clear that the only power that vests with the Conciliation officer is that of holding the proceedings for the purpose of bringing about settlement of dispute between the parties and if no such settlement is possible, submit his report of failure to the appropriate Government. The Conciliation Officer does not have the power to adjudicate upon the dispute between the parties. It is held in number of decisions of the Hon'ble Supreme Court that even the appropriate Government, while considering the question whether an industrial dispute is to be referred for adjudication or not under Section 10 of the Industrial Disputes Act, cannot adjudicate the issues and decide the lis between the parties (see AIR 1989 SC 1565 and AIR 1985 SC 860). If the appropriate Government cannot enter into the merits of the dispute sought to be raised by the workman, can a Conciliation officer exercise such a power is the question and the answer has to be obviously in the negative."

"7. In the present case I find that the Conciliation Officer had misdirected himself in refusing to conciliate the issue on the ground that BCS Rules are applicable to the petitioner. What would be the effect of application of such Rules has got to be left for the competent Industrial Tribunal or the Labour Court to decide in case ultimately the dispute is decided to be referred by the appropriate Government. The Conciliation Officer at this stage cannot terminate the dispute prematurely by refusing to

conciliate between the parties."

14. The conclusion of the above discussion is that I find the impugned decision as illegal and unlawful, and cannot be allowed to sustain. The petitioner had given reasons for approaching the Conciliation Officer after a gap of about six years. Though learned Counsel for the respondent No.3 has submitted that the petitioner has not produced any documentary proof in support of his contention of having approached the respondent No.3, by very nature of events, there cannot be any documentary proof of any personal visit and the respondent No.3 has nowhere denied the said averments of the petitioner either by replying to his letter dated 29.12.2002 or even in the affidavit filed before this Court in response to the present petition. In view of the above discussion, I find that the respondent No.3 was not justified in refusing to carry out the conciliation between the parties. Consequently, the impugned order dated 21.5.2003 is quashed and set aside. Respondents Nos. 1 and 2 are directed to carry out conciliation proceedings between the petitioner and the respondent No.3 and submit appropriate report to the Government upon conclusion of such proceedings. In the result, the petition is allowed. Rule is made absolute with no order as to costs.

(Akil Kureshi, J.)

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